

28 **72-3-109. Division of responsibility with respect to state highways in cities and**
29 **towns.**

30 (1) Except as provided in Subsection (3), the jurisdiction and responsibility of the
31 department and the municipalities for state highways within municipalities is as follows:

32 (a) The department has jurisdiction over and is responsible for the construction and
33 maintenance of:

34 (i) the portion of the state highway located between the back of the curb on either side
35 of the state highway; or

36 (ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

37 (b) The department may widen or improve state highways within municipalities.

38 (c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is
39 responsible for construction and maintenance of the right-of-way.

40 (ii) If a municipality grants permission for the installation of any pole, pipeline,
41 conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any
42 kind or character within the portion of the right-of-way under its jurisdiction:

43 (A) the permission shall contain the condition that any installation will be removed
44 from the right-of-way at the request of the municipality; and

45 (B) the municipality shall cause any installation to be removed at the request of the
46 department when the department finds the removal necessary:

47 (I) to eliminate a hazard to traffic safety;

48 (II) for the construction and maintenance of the state highway; or

49 (III) to meet the requirements of federal regulations.

50 (iii) A municipality may not install or grant permission for the installation of any pole,
51 pipeline, conduit, sewer, ditch, culvert, billboard, advertising sign, or any other structure or
52 object of any kind or character within the portion of the right-of-way under its jurisdiction
53 without the prior written approval of the department. The department may, by written
54 agreement with a municipality, waive the requirement of its approval for certain types and
55 categories of installations.

56 (d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated,
57 reimbursement shall be made for the relocation as provided for in Section 72-6-116.

58 (e) (i) The department shall construct curbs, gutters, and sidewalks on the state

59 highways if necessary for the proper control of traffic, driveway entrances, or drainage.

60 (ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are
61 removed, the department shall replace the curbs, gutters, or sidewalks.

62 (f) The department may furnish and install street lighting systems for state highways,
63 but their operation and maintenance is the responsibility of the municipality.

64 (g) If new storm sewer facilities are necessary in the construction and maintenance of
65 the state highways, the cost of the storm sewer facilities shall be borne by the state and the
66 municipality in a proportion mutually agreed upon between the department and the
67 municipality.

68 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
69 the department shall make rules governing the location and construction of approach roads and
70 driveways entering the state highway. The rules shall:

71 (i) include criteria for the design, location, and spacing of approach roads and
72 driveways based on the functional classification of the adjacent highway, including the urban
73 or rural nature of the area;

74 (ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model
75 access management policy or ordinance developed by the department under Subsection
76 [72-2-117\(8\)](#);

77 (iii) include procedures for:

78 (A) the application and review of a permit for approach roads and driveways including
79 review of related site plans that have been recommended according to local ordinances; and

80 (B) approving, modifying, denying, or appealing the modification or denial of a permit
81 for approach roads and driveways within 45 days of receipt of the application; and

82 (iv) require written justifications for modifying or denying a permit.

83 (b) The department may delegate the administration of the rules to the highway
84 authorities of a municipality.

85 (c) In accordance with this section and Section [72-7-104](#), an approach road or driveway
86 may not be constructed on a state highway without a permit issued under this section.

87 (3) The department has jurisdiction and control over the entire right-of-way of
88 interstate highways within municipalities and is responsible for the construction, maintenance,
89 and regulation of the interstate highways within municipalities.

90 Section 2. Section 72-7-102 is amended to read:

91 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
92 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
93 **for violation.**

94 (1) As used in this section, "management costs" means the reasonable, direct, and
95 actual costs a highway authority incurs in exercising authority over the highways under its
96 jurisdiction.

97 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

98 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
99 street; or

100 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
101 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
102 character within the right-of-way.

103 (3) (a) (i) A highway authority having jurisdiction over the right-of-way may allow
104 excavating, installation of utilities and other facilities or access under rules made by the
105 highway authority and in compliance with federal, state, and local law as applicable.

106 (ii) Notwithstanding Subsection (3)(a)(i), a highway authority may not allow
107 excavating, installation of utilities and other facilities, or access to any portion of a state
108 highway, including portions thereof within a municipality, without the prior written approval of
109 the department. The department may, by written agreement with a municipality, waive the
110 requirement of its approval for certain types and categories of excavations, installations, and
111 access.

112 (b) (i) The rules may require a permit for any excavation or installation and may
113 require a surety bond or other security.

114 (ii) The application for a permit for excavation or installation on a state highway shall
115 be accompanied by a fee established under Subsection (4)(f).

116 (iii) The permit may be revoked and the surety bond or other security may be forfeited
117 for cause.

118 (iv) A pedestrian facility disturbed by a project permitted under this section shall be
119 repaired using construction standards established by the highway authority.

120 (4) (a) Except as provided in Section 72-7-108 with respect to the department

121 concerning the interstate highway system, a highway authority may require compensation from
122 a utility service provider for access to the right-of-way of a highway only as provided in this
123 section.

124 (b) A highway authority may recover from a utility service provider, only those
125 management costs caused by the utility service provider's activities in the right-of-way of a
126 highway under the jurisdiction of the highway authority.

127 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
128 competitively neutral basis.

129 (ii) If a highway authority's management costs cannot be attributed to only one entity,
130 the management costs shall be allocated among all privately owned and government agencies
131 using the highway right-of-way for utility service purposes, including the highway authority
132 itself. The allocation shall reflect proportionately the management costs incurred by the
133 highway authority as a result of the various utility uses of the highway.

134 (d) A highway authority may not use the compensation authority granted under this
135 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
136 its management costs.

137 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
138 a highway authority is entitled to recover those management costs.

139 (ii) If the highway authority that assesses the management costs or franchise fees is a
140 political subdivision of the state and the utility service provider serves customers within the
141 boundaries of that highway authority, the management costs may be recovered from those
142 customers.

143 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
144 department shall adopt a schedule of fees to be assessed for management costs incurred in
145 connection with issuing and administering a permit on a state highway under this section.

146 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
147 fee imposed by a municipality on a telecommunications provider, as defined in Section
148 [10-1-402](#), is subject to Section [10-1-406](#).

149 (5) Permit fees collected by the department under this section shall be deposited with
150 the state treasurer and credited to the Transportation Fund.

151 (6) Nothing in this section shall affect the authority of a municipality under:

- 152 (a) Section 10-1-203 or 10-1-203.5;
- 153 (b) Section 11-26-1;
- 154 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or
- 155 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.
- 156 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
- 157 misdemeanor.

Legislative Review Note
Office of Legislative Research and General Counsel